FILED
MAR 8 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 974

LESTER KRAFT and ALVA C. KRAFT, d/b/a
NATIONAL ART ACADEMY, *Petitioners*

v.

BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA,
Respondent

PETITIONERS REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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To the Honorable Chief Justice, and the Honorable Justices of said Court:

Respondent requests the Court to deny the Petition on the ground that the "questions presented by petitioners turn on the construction of a statute of purely local application and significance" and cites decisions of the Court applying this principle. (Respondent's Brief, p. 5) However, the Court has granted a

Petition in a District of Columbia local law matter when an important constitutional issue is presented that is not "unsubstantial." *District of Columbia* v. *Little,* 339 U.S. 1, (1950); *Corrigan, et al.* v. *Buckley,* 271 U.S. 323, (1926).

Respondent revoked Petitioners' license for alleged violation of purported "regulations". Petitioners contend that Respondent arrogated to itself arbitrary power to issue the said "regulations" and thus violated the governing statute, TITLE 29, D. C. Code § 415. (App. 2-A) Petitioners' position is supported by Senate Report No. 611 "which accompanied S. 2366 of the 70th Congress, the bill enacted on March 2, 1929, as the statute here involved." (Respondent's Brief, p. 6)

Senate Report No. 611 at page 5 states as follows:

> "* * * The act does *not give any broad legislative or discretionary powers to the Board of Education* but undertakes to devise in *four clauses* under a principal section of the bill, the measuring rod which *shall be* used by the Board of Education as a basis for granting or withholding its license. * * *" (Emphasis supplied)

Thus the report clearly states the intention of Congress to deny to Respondent any power to promulgate regulations. Nevertheless, on October 16, 1960 Respondent promulgated its "Standards", (J.A.-19) and applied them to Petitioners on November 21, 1962 (J.A.-23) to revoke their license. The revocation hearing commenced February 25, 1963 (J.A.-67), was recessed that date, and resumed on March 19, 1964. (J.A.-68)

Petitioners allege in their Complaint (J.A.-5, 6) that Respondent as an agency of the Federal gov-

ernment violated the "due process clause" of the Fifth Amendment to the United States Constitution by the following arbitrary actions:

1. By promulgating "Regulations" in violation of TITLE 29, D. C. Code § 415 and applying the said "Standards" to Petitioners;

2. The purported "Regulations" applied to Petitioners by Respondent are so vague they constitute an arbitrary exercise of power;

3. The purported "Regulations" applied to Petitioners impose requirements beyond those fixed by TITLE 29 D. C. Code § 415 and constitute an arbitrary exercise of power by Respondent;

4. Respondent acted arbitrarily by basing its revocation decision on a Committee report rather than on evidence in the hearing record;

5. Respondent acted arbitrarily by commingling its investigative, prosecuting and adjudicating functions at its decision making sessions.

These constitutional issues are "special and important reasons" for granting the Petition within the meaning of the Court's Rule 19.

These issues are framed by the pleadings (J.A.-1, 8) and were argued before the trial court. However, the said court failed to render a decision on each of the said issues. (J.A.-11) The same issues were presented to the Circuit Court of Appeals which affirmed the trial court without opinion. (App. 1-A)

Petitioners respectfully submit that these issues present important questions of the limits circumscribing the authority of the Board of Education of the

District of Columbia to revoke a license granted under a 1929 law of Congress. The instant case is a matter of first impression under the said law.

Volume 5, *American Jurisprudence 2nd,* "Appeal and Error", § 791, Page 232 states:

> "* * * an error complained of may be ground for reversing the judgment where a constitutional or statutory right has been violated, although the error may appear to be otherwise harmless. * * * "

The Petitioners' license is a valuable property right. They assert that this right was deprived them by the arbitrary actions of the Respondent in violation of the governing statute and the Federal Constitution. Therefore, on the bases of the foregoing authorities, the Court is requested to grant the Petition.

Respectfully submitted,

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